

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM SZYMCAK, STEFAN SCHUELE,
KIM DREHER, MARIO LOPEZ, MELANIE
RIVERA, KATRINA BOYD,
ANGELA GREATHOUSE,
CORNELIUS JACKSON, DAVID
SIMONS, LOLITA DILLARD, and
ANNE STEWART, individually and
on behalf of others similarly situated,

Plaintiffs,

-against-

NISSAN NORTH AMERICA, INC.,
and NISSAN MOTOR CO., LTD.,

Defendants.

Civil Action Number:
10-CV-07493(VB)

**AFFIRMATION OF
S. VANCE WITTIE,
ESQ. IN SUPPORT OF
DEFENDANT'S
MOTION TO STRIKE**

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S. VANCE WITTIE, an attorney duly admitted, *pro hac vice*, to practice law before the United States District Court for the Southern District of New York, hereby affirms the following to be true or, if stated upon information and belief, believes it to be true, under penalty of perjury:

1. I am Special Counsel in the law firm of SEDGWICK LLP, attorneys for defendant, NISSAN NORTH AMERICA, INC. ("NNA"), as such, I am familiar with the facts, pleadings and prior proceedings of this action by virtue of my review of the file maintained in this office for the defense of this action.

2. This Affirmation and the accompanying Memorandum of Law are respectfully submitted in support of NNA's Motion to Strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure or, alternatively, Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

PRÉCIS OF THE ARGUMENT

3. On December 16, 2011, this Court issued a Memorandum Decision (Dkt. # 26) (the “Order”) on Nissan North America, Inc.’s (“NNA”) Motion to Dismiss Plaintiffs’ First Amended Complaint for Failure to State a Cause of Action Pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure, which was originally filed April 25, 2011 (Dkt. # 9) (the “Motion”).

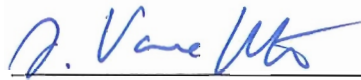
4. In the its December 16, 2011 Order, the Court granted NNA’s Motion, in part, and consequently dismissed certain of Plaintiffs’ claims *with prejudice*.

5. Notwithstanding the dismissal with prejudice as to particular claims, Plaintiffs repleaded those claims in paragraphs 104-113, 114-123, 165, 177-182 of Plaintiffs’ Second Amended Complaint, filed January 17, 2012 (Dkt. # 34) (the “SAC”).

6. Because the claims in these paragraphs were dismissed with prejudice pursuant to NNA’s 12(b)(6) Motion, and thus were dismissed on their merits, NNA moves to strike paragraphs 104-113, 114-123, 165, 177-182 of Plaintiffs’ Second Amended Complaint pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, as claims paragraphs immaterial to the instant litigation. Alternatively, NNA moves to dismiss the claims contained in paragraphs 104-113, 114-123, 165, 177-182 of Plaintiffs’ Second Amended Complaint pursuant to Rule 12(b)(6) for failing to state a cause of action upon which relief can be granted, as they have already been dismissed.

Dated: Dallas, Texas
March 2, 2012

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Vance Wittie", is written over a horizontal line.

S. Vance Wittie (admitted *pro hac vice*)
TX Bar No. 21832980